IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7219 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASILABEN W/O. MUNNASING AVADHRAJSING RAJPUT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7219 of 2002

MR SK BUKHARI for Petitioner No. 1

Mr.M.K.Patel, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 1

SERVED BY RPAD - (R) for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/02/2003

ORAL JUDGEMENT

1. By filing this petition, the petitioner has challenged the order of detention dated 24-6-2002 passed against her by the Police Commissioner, Surat City, whereby the petitioner has been detained under subsection

(2) of Section 3 of the Prevention of Anti-social Activities Act, 1985 ("PASA" for short).

2. The grounds of detention served upon the petitioner alongwith the order of detention indicate that there are four pending cases against the petitioner for offences punishable under Sections.66(1)B, 65A,E, & 116 (b) of the Prohibition Act. The said cases are pending trial. It is alleged against the petitioner that she is illegally selling or dealing with Indian made foreign liquor.

3. That in consideration of the aforesaid material, the detaining authority came to the conclusion that the petitioner is a " bootleggar" within the meaning of Section 2(b) of PASA. That the petitioner is released on bail and despite filing Prohibition cases against the petitioner, the bootlegging activities of the petitioner could not be prevented. That resort to general provisions of law being insufficient to prevent the petitioner from continuing with her antisocial activities, the detention order is necessary as the cases under the Bombay Prohibtion Act filed against the petitioner is pending, and therefore, the impugned order is passed.

3. The petitioner has challenged the impugned order mainly on the ground of delay in deciding the representation made by the petitioner. It is contended at the Bar on behalf of the petitioner that even though the petitioner has made representation to the State Government as well as the Secretary, Advisory Board, on 24th July, 2002, the same have not been decided promptly. Learned AGP Mr. Patel has submitted that the said representation which was received by the department on 25th July,2002, was decided on 29th July,2002. It is required to be noted that the detaining authority in paragraph 3 of his reply has merely stated that both the representations were sent to the State Government, but the State Government has not filed any affidavit-in-reply explaining the delay in taking decision. In fact, there is no explanation as to what happened to the first representation made by the petitioner and with respect to the second representation there is no explanation as to the delay of three days in deciding the same. Therefore, the impugned order of detention cannot be sustained. In that view of the matter, the impugned order of detention deserves to be quashed and set aside.

4. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention

dated 24-6-2002 passed by the Police Commissioner, Surat City, against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu-Smt.Rasilaben wife of Munnasing Avadhrajsing Rajput is ordered to be released forthwtih, if not required in any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J.)

stanley-pbm.